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Patent  
Attorney Docket No. GEMS8081.037

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Saranathan et al.  
Serial No. : 09/681,068  
Filed : December 19, 2000  
For : Acquisition of High-Temporal Free-  
Breathing MR Images  
Group Art No. : 3742  
Examiner : Robinson, D.

FAX RECEIVED

AUG 19 2003

GROUP 3700

## CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

I hereby certify that, on the date shown below, this correspondence is being:

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## Transmission

☒ transmitted by facsimile to Fax No.: 703-872-9302 addressed to Examiner Robinson at the Patent and Trademark Office.Date: 8-15-03*James A. Jordan*  
SignatureCommissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450PETITION FOR SUPERVISORY REVIEW

Dear Sir:

Applicant herein requests supervisory review in the above-captioned application. In the Office Action mailed July 15, 2003, the Examiner substantially regurgitated remarks in support of a requirement for restriction that were originally presented in a Restriction Requirement mailed March 21, 2003. In an Election with Traverse to the

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March 21, 2003 Office Action mailed April 21, 2003, Applicant elected claims 1-9 of Group I. Notwithstanding this election, the Examiner simply provided a restated Restriction Requirement and has yet to provide an action on the merits.

The Examiner has provided an original and now restated four-way restriction of claims 1-32. The Examiner has identified inventions of Groups III and IV and Groups I and II as being related as product and process of use. The Examiner has concluded that in the instant case the process can be practiced with another materially different product such as a product capable of reconstructing an image based on at least one R-R interval or a combination of first and second sets of partial MR image data. Interestingly, the language the Examiner uses to identify the "materially different product" is language taken verbatim from the product claims 10-18 and 19-24. As such, it is clear that the Examiner fails to appreciate the burden that is imposed under MPEP §806.05(h) with respect to the Examiner's burden of providing a viable alternative use.

Applying the analysis given by the Examiner, claims 1-9 and 25-32 are drawn to methods of "use" and, in contrast, claims 10-18 and 19-24 are drawn to "products." However, the examples that the Examiner has provided of materially different products for carrying out the uses of claims 1-9 and 25-32 are the products called for in claims 10-18 and 19-24. As such, it is clear that the Examiner is unclear as to the burden imposed by MPEP §806.05(h) or fails to appreciate that which is called for in claims 1-32.

In other words, the Examiner has concluded that the inventions of Groups III and IV are distinct from the inventions of Groups I and II. The support relied upon by the Examiner in concluding that the inventions are distinct is, simply, that the inventions are distinct. That is, the Examiner has applied circular reasoning to substantiate the conclusion that the inventions are distinct by relying upon the self-serving assertion that the inventions are distinct. However, it is simply not sufficient for the Examiner to state that the inventions are distinct. As set forth in MPEP §806.05(h), the Examiner must provide an example of a materially different product. On two separate occasions, the Examiner has failed to provide the requisite example.

Additionally, as discussed in the original Election and reiterated in the Election filed contemporaneously herewith, the first action taken by the Patent Office in the present case was March 21, 2003, over two years since the application's filing. The first action taken by the Office was a Restriction Requirement and therefore was not on the merits. Applicant provided a full and complete response to the Restriction Requirement as well as making an Election with Traverse on April 21, 2003 wherein Applicant elected

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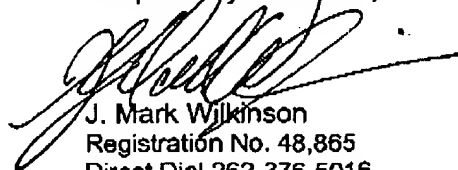
claims 1-9 of Group I. To date, however, Applicant has yet to receive an action on the merits. Specifically, the Examiner has issued a "restated" Restriction Requirement mailed July 15, 2003 wherein, as noted above, the Examiner simply regurgitated with one simple change in phraseology the restriction remarks previously presented in the Restriction Requirement mailed March 21, 2003. Notwithstanding the election of claims 1-9 on April 21, 2003, the Examiner elected to issue a restatement of the original restriction and ignored Applicant's original election. As such, it will be well over two and one-half years since the application's filing for the Office to issue a substantive action on the merits with respect to the claimed invention.

Further, the Examiner clearly failed to consider the Traversal Remarks provided in the original Election mailed April 21, 2003 despite those remarks being substantially prohibitive with respect to the Examiner's original and restated restrictions. Applicant believes that had the Examiner considered the Traversal Remarks presented in the first Election, the need to issue a restated Restriction Requirement would have been obviated. As such, by the Examiner's issuance of a restated Restriction Requirement, the Examiner has merely delayed substantive examination of the application thereby increasing the time to issuance as well as Applicant's cost in prosecuting the application. Accordingly, Applicant respectfully believes that supervisory review of the present application is necessary and warranted.

A fee transmittal authorizing charging of deposit account 07-0845 in the amount of \$130.00 for the requisite Petition fee is enclosed.

Applicant cordially invites the Examiner's supervisor to contact the undersigned to further expedite the handling of this matter.

Respectfully submitted,



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Dated: August 15, 2003  
Attorney Docket No.: GEMS8081.037

**P.O. ADDRESS:**  
Ziolkowski Patent Solutions Group, LLC  
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262-376-5170

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AUG 19 2003

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PTO/SB/17 (05-03)

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# FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

☐ Applicant Claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$130.00)

## Complete if Known

Application Number	09/681,068
Filing Date	12/19/2000
First Named Inventor	Saranathan, et al.
Examiner Name	D. Robinson
Art Unit	3742
Attorney Docket No.	GEMS8081.037

## METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None☒ Deposit Account

Deposit Account Number	07-0845
Deposit Account Name	GE Medical Systems

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Credit any overpayments☐ Charge any additional fee(s) during the pendency of this application☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

## 1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	750	2001	375	Utility filing fee	
1002	330	2002	165	Design filing fee	
1003	520	2003	260	Plant filing fee	
1004	750	2004	375	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$)

## 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims		Extra Claims		Fee from below		Fee Paid
Independent	Dependent	- 20** =	X	- 3** =	X	

Multiple Dependent

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	84	2201	42	Independent claims in excess of 3	
1203	280	2203	140	Multiple dependent claim, if not paid	
1204	84	2204	42	**Reissue independent claims over original patent	
1205	18	2205	9	**Reissue claims in excess of 20 and over original patent	

SUBTOTAL (2) (\$)

\*\* or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

## 3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	410	2252	205	Extension for reply within second month	
1253	930	2253	465	Extension for reply within third month	
1254	1,450	2254	725	Extension for reply within fourth month	
1255	1,970	2255	985	Extension for reply within fifth month	
1401	320	2401	160	Notice of Appeal	
1402	320	2402	160	Filing a brief in support of an appeal	
1403	280	2403	140	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,300	2453	650	Petition to revive - unintentional	
1501	1,300	2501	650	Utility issue fee (or reissue)	
1502	470	2502	235	Design issue fee	
1503	630	2503	315	Plant issue fee	
1480	130	1480	130	Petitions to the Commissioner	\$130.00
1807	50	1807	50	Processing fee under 37 CFR 1.17(a)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	750	2809	375	Filing a submission after final rejection (37 CFR § 1.129(e))	
1810	750	2810	375	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	750	2801	375	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$130.00)

## SUBMITTED BY

Name (Print/Type) Timothy J. Zolkowski

Registration No. 38,368  
(Attorney/Agent)

## Complete (if applicable)

Telephone 262-376-5170

Signature

Date

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS.

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